

2.7 Deputy R.G. Le Herissier of the Minister for Health and Social Services regarding targets for expeditious handling of discipline cases and continued payments to suspended member of staff:

Would the Minister inform Members what targets exist, if any, for the expeditious handling of discipline cases within the department and whether overtime and bonus payments, in addition to the normal salary, continue to be paid to a suspended member of staff and, if so, the reasons why?

Senator S. Syvret:

In respect of disciplinary matters, the Health and Social Services Department follows States' policy and takes its advice from the States' Human Resources Department. Where an employee is suspended, Health and Social Services maintain normal payments as suspension is a neutral act and must not be seen to be punitive. If normal contractual payments were to be stopped, this would punish the employee without good ground as no case had yet been proven against them. If the case involves a Police investigation, the suspension may need to be extended to enable a Police inquiry to be concluded. Such inquiries may then lead to prosecutions. Obviously to conduct disciplinary procedures before a prosecution risks jeopardising the case before it comes to court, thus risking the success of the action. In some cases of suspension it is not only the central person who is suspended but other people involved in or peripheral to an incident if it is thought prudent to take them away from the workplace while an investigation takes place. Non contractual overtime is not paid on suspension as overtime must be worked in order for it to be paid. However, some long serving employees have a small amount of guaranteed overtime which is contractual and is included in basic pay. This is a remuneration feature found in other States' departments but this is an old practice which is gradually diminishing. Health and Social Services do not pay bonuses. The relevant disciplinary procedures set down do set down guidelines as to timescales for dealing with disciplinary cases, in particular the handling of appeals. However, it is not possible to maintain a rigid timetable as each case will need to be determined on its own merits and the length of time required for the investigation will vary depending on the particular circumstances of each case which will include having regard to Police inquiries and prosecutions. Once the investigation is complete and a decision is taken to proceed with the formal disciplinary hearing the case is dealt with as soon as possible.

2.7.1 Deputy R.G. Le Herissier:

I should add I am in no way speaking on behalf of individuals with whom I am in no way in contact. In reference, Sir, for example to a case that took 5 months to resolve in terms of the use of abusive language towards a patient. I understand 2 words - 2 expletives - were used, one of which was disputed in this case. It took 5 months to resolve. Would the President explain, Sir, why this case took 5 months to resolve and the Sword of Damocles was allowed to hang over a person for so long?

Senator S. Syvret:

My understanding of that particular case is that it took that length of time because not only was there the initial suspension; the investigation - including taking statements from witnesses, potential witnesses and the person who was abused - but then the disciplinary action took place. Then there was an appeal against the outcome of the original disciplinary action. So that the investigation, the original disciplinary

decision and then the appeal, I think, would explain why that amount of time was taken in that case.

2.7.2 Deputy R.G. Le Herissier:

We have, for example, the phenomenon of case management coming more and more into the court system in the way in which cases are presented, the way in which they are managed and the gross amount of time expended upon them. Would the President say whether there is anyone in the organisation who is actually monitoring the way cases have progressed, the way charges are brought against people and whether, indeed, charges in some cases are used as, quite frankly, an over the top solution to an issue? Who is in charge of these matters and is keeping a professional eye on these matters and saying we may have got it wrong for example?

Senator S. Syvret:

There were 2 people within the organisation who I would look to to have particular responsibility. One would be our Director of Human Resources. The other, ultimately, would be the Chief Executive. Both these officers have a specific duty in this field and would be expected as part of their normal, professional duties to make sure that any kind of investigation processes, disciplinary actions were carried out correctly according to all laid down agreements and guidelines and despatched in the fastest possible time under the circumstances of each case.

2.7.3 The Deputy of St. Martin:

Can I seek an answer from the Minister? Can he say that lessons have been learnt from the lengthy suspensions imposed upon some of these employers and, indeed, maybe some mechanism may well be put in place to ensure that these lengthy suspensions do not continue?

Senator S. Syvret:

I think the Deputy is making reference to one particular case which has gone for something in excess of 3 years now. To answer his question, yes, my department and my senior officers are exploring with other States departments and agencies whether, in fact, there is some form of disciplinary procedure that could be put in place and worked upon without risking prejudicing potential Police investigations and prosecutions should those considerations be relevant under any particular case. The reason why that particular case has taken so long to resolve is because the prosecution has not yet taken place notwithstanding repeated letters. I have a bundle of them here, between our department and the Law Officers' Department. To date, I am afraid, still no prosecution has taken place and it is a situation that we, at Health and Social Services, deeply regret. We are not happy with it but it is a matter for the administration of justice. I am afraid it is out of our hands.

2.7.4 The Connétable of St. Helier:

Would the Minister not agree with me that the matter of settling disciplinary disputes such as this transcends the Health and Social Services Department and, indeed, is a problem for all States departments? Will he undertake to raise the matter on the Council of Ministers to see if a joint approach can be taken towards this right across the board?

Senator S. Syvret:

Yes, Sir, I certainly will be. That is a good suggestion and something I was thinking of doing myself. It is absolutely clear that there is a problem here. There is anomaly in how we can deal with matters of suspension with some despatch, not only for the efficiency of States departments and the proper use of their resources, but frankly also for the individuals concerned. I do not believe it is fair or reasonable for issues such as disciplinary actions or, frankly, for that matter, prosecutions to be hanging over the heads of individuals for year after year. It is not a happy state of affairs and yes, Sir, I will be raising this with the Council of Ministers to see what we might possibly be able to do about it. I would imagine that the Council of Ministers may well want to enter into discussions for example with the Law Officers' Department on this question.

2.7.5 Deputy R.G. Le Herissier:

I wonder if the President could inform the house who actually takes the decision that a disciplinary case will go forward and who, other than that particular person, examines that decision to ensure that this is, indeed, a good use of resources and not a potential case of injustice?

Senator S. Syvret:

I think I have already explained in answer to a previous case from the Deputy. There were 2 key individuals within the organisation that have this kind of responsibility. Ultimately, it is the Chief Executive. If any particular case appears significant or problematic or unusual so that it might be described as outside the realm of normal day-to-day complaints and potential suspensions and disciplinary actions, advice is taken from the States central Human Resources Department to ensure that the actions being taken by the Health and Social Services Department do, in fact, meet all appropriate requirements and certainly that has been the case in recent times.

2.7.6 The Deputy of St. Martin:

Is it a case that sometimes suspension seems to be the first option about settling a dispute rather than the last? Would the Minister not agree really that suspension should only be incurred or imposed upon those where a case is quite serious because it would appear from the list that was given to us 2 weeks ago in answer to written question by Deputy Le Herissier that there were a number of people here who were suspended and ultimately there was no action taken. So, it would appear that good money was wasted and unfortunate stress incurred by those or suffered by those who were suspended.

Senator S. Syvret:

In answer to that question it is necessary for Members to understand that strictly speaking, technically, legally and procedurally suspension is not a disciplinary act. It is simply a case of pausing that person's work in that particular area while an investigation takes place. I cannot agree with the Deputy because within Health and Social Services it, by definition, needs to be a highly disciplined environment where the protection of vulnerable people and patients and the integrity of the organisation has to come first. As I think I alluded to in the original answer, it may be necessary for suspensions to take place where there is no question ultimately of disciplinary action against the individuals concerned simply because the nature of the incident, clinical errors, mishaps, whatever they may be mean that in order for a clean investigation to take place it is appropriate to remove the individuals concerned from

that particular work environment. So, it is important to understand that suspension of itself is not a disciplinary action and is sometimes necessary to ensure a good and thorough investigation of any untoward incidents that may have occurred.

2.7.7 Deputy J.B. Fox of St. Helier:

Would the Minister also agree that he and his Ministry and indeed the Council of Ministers have a duty of care not only to their staff, but to the staff's families and that any case being investigated should be expedited without undue delay in order to find an appropriate resolution? Thank you, Sir.

Senator S. Syvret:

As I have already said, I do not personally believe it is acceptable for these kinds of cases to drag on year after year. It is neither fair on the person suspended nor, indeed, on anyone else involved in the case and yes, as I have already said, I will be raising this question with the Council of Ministers to see if there is some form of improved procedure to deal with this.